

7/17/92

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LINDA M. BULLEN
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July 17, 1992

Scott T. Dennis, C.P.G.
Director of Geology
WW Engineering & Science, Inc.
5555 Glenwood Hills Parkway, S.E.
Post Office Box 874
Grand Rapids, Michigan 49588-0874

Re: United States v. Selmer

Dear Scott:

Enclosed are copies of pages from various deposition transcripts and exhibits which may be useful in developing the Work Plan.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Linda M. Bullen

LMB:gr

cc: Michael W. Steinberg, Esq.
Frank Bentkover, Esq.
Elizabeth Murphy, Esq.
Risa I. Weinstock, Esq.

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1 A. I believe so, yes.

2 MR. PHILLIPS: Okay. Can we just have
3 that marked as Plaintiff's Deposition Exhibit 1,
4 please.

5 (Plaintiff's Plaintiff's Deposition
6 Exhibit No. 1 marked for
7 identification.)

8 BY MR. PHILLIPS:

9 Q. All right. Mr. Thibos, we mentioned earlier
10 that you had given two affidavits in connection
11 with this case; right?

12 A. Yes.

13 Q. Okay. And the first one was on the 20th of
14 April, 1989; is that right?

15 A. (No response.)

16 Q. I'm sorry.

17 A. Yes.

18 Q. I'm sorry.

19 A. I'd like a copy.

20 Q. Let me give you copies. There you are.

21 A. Thank you.

22 Q. So the first of these then you executed on the
23 20th of April, 1989; is that correct?

24 A. Yes.

25 Q. Okay. And you say at paragraph number 5 of this

1 affidavit, quote, "I make this affidavit upon
2 personal knowledge and upon knowledge obtained
3 by me during my employment at the plant"; is
4 that right?

5 A. Yes.

6 Q. And by the plant you're talking about the plant
7 at 500 Industrial Parkway in Elkhart, Indiana?

8 A. Yes, sir.

9 Q. Okay. At paragraph 9 in this affidavit, sir, at
10 page 2, you say, quote, "It was a common
11 practice for C.G. Conn, Ltd. and Macmillan, Inc.
12 to collect spent TCE in drums and barrels and to
13 dispose of the liquids in a depressed, marshy
14 area immediately behind the facility." Do you
15 see that?

16 A. Yes.

17 Q. All right. You go on to say that "TCE was
18 disposed of in this manner on an almost daily
19 basis." Do you see that?

20 A. Yes.

21 Q. Okay. Are those statements true?

22 A. They're different from -- in a way -- I believe
23 that when I made this statement they were true.
24 But I've done more thinking about it since and
25 there is a difference.

- Q. Okay. Can you name some specific industry names in which
difference exists in nature of business?
3. Some names you can name are telephone companies and
airlines.
4. Name of telephone company is AT&T.
5. Name of airline is Pan American.
6. Name of another airline is United.
7. Name of another airline is American.
8. Name of another airline is Trans World.
9. Name of another airline is Delta.
10. Name of another airline is Pan American.
11. Name of another airline is American.
12. Name of another airline is Pan American.
13. Name of another airline is American.
14. Name of another airline is Pan American.
15. Name of another airline is American.
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19. Name of another airline is American.
20. Name of another airline is Pan American.
21. Name of another airline is American.
22. Name of another airline is American.
23. Name of another airline is American.
24. Name of another airline is American.
25. Name of another airline is American.

1 A. Yes.

2 Q. Two deep?

3 A. (Witness nods head.)

4 Q. And how long a distance did they run?

5 A. Approximately 50 barrels in number.

6 Q. Fifty in each row or two deep?

7 A. Fifty altogether.

8 Q. So there would be two rows of 25?

9 A. Yeah.

10 MR. BENTKOVER: Okay. Let's go off
the record for a minute.

11 (Discussion held off the record.)

12 MR. BENTKOVER: Okay. I'd ask if the
reporter can mark this as Kish Exhibit 3,
please.

13 (Plaintiff's Kish Deposition
14 Exhibit No. 3 marked for
15 identification.)

16 BY MR. BENTKOVER:

17 Q. Mr. Kish, I'm going to ask you to look at this,
18 which is a copy of a drawing or a photograph
19 given to us by Selmer and Phillips in discovery.
20 And can you locate the plant on this exhibit?

21 A. Yes, I can.

22 Q. Could you take the red pen and, let's see, mark

1. -- I guess I'd say a large red octopus upside down on cards.
2. Spaceless language like some other things I'm writing on cards.
3. Jumbled up.
4. (Artificial compositions.)
5. Q. Now, as of when this deck was first composed.
6. One plan?
7. Mrs. HANDBUTT, I am just going to
8. So I guess. I don't know what we're going to do.
9. Q. Foundation grounds. I, a note since there are, is
10. That little table has a map of the place where it's located.
11. It's carrying.
12. If so known, the can answer the question.
13. FT
14. THE WITNESS: That is accurate as far as
15. Cuts the surfaces and acidity slightly affected.
16. BY MR. BENTKOVER:
17. Q. Why. We change an addition added to cuts plate
18. At any time?
19. A. Yes.
20. Q. When was that addition composed?
21. A. Well, there were -- during each production came
22. DC --
23. Q. Yes.
24. A. During each production came, the was the director
25. Sunax or can back of the outfitting.

- 1 Q. Do you know what year that was?
- 2 A. No, I don't.
- 3 Q. What's your best estimate?
- 4 A. Approximately '75.
- 5 Q. Could you write "annex" next to that little area
- 6 and then draw a small circle around the annex.
- 7 A. (Witness complies.)
- 8 Q. Now, can you locate the area where these drums
- 9 or barrels -- I think you said there were 50 of
- 10 them, where they were stacked.
- 11 MS. HANZBUTT: I'm just going to state
- 12 an objection. I think he specifically said that
- 13 they were not stacked.
- 14 BY MR. BENTKOVER:
- 15 Q. Where these 50 drums were placed alongside the
- 16 building. Can you find that area on this
- 17 diagram?
- 18 A. Okay. Now, there were two specific time
- 19 frames. Before -- before the annex was put on,
- 20 the sidewalk was here (indicating).
- 21 Q. Where the --
- 22 A. And then after the annex was built, then that
- 23 sidewalk was outside of that.
- 24 Q. Well, where the drums were -- you mentioned that
- 25 there were 50 drums filled with liquid from the

- 1 still; right?
- 2 A. Still bottoms.
- 3 Q. Okay. Where were those drums located? Were
4 they located where the annex is now; is that
5 what you're saying?
- 6 A. Before the annex was built, yes. And then after
7 the annex was built, they were right outside of
8 that.
- 9 Q. Or, you mean these drums were located alongside
10 the building and you then moved the drums in
11 order to construct the annex?
- 12 A. Right.
- 13 Q. I see. And were the drums then located along
14 the wall of the annex?
- 15 A. Yes.
- 16 Q. Did they fill the entire length of the wall of
17 the annex?
- 18 A. Approximately two-thirds of the way.
- 19 Q. Okay. Could you mark down on here next to the
20 annex where the drums were located and then
21 write "drums."
- 22 A. (Witness complies.)
- 23 Q. And while we have this drawing, there's one
24 other thing I would like you to locate. Do you
25 remember earlier this morning you told us about

1 the tank which overflowed TCE up onto the roof
2 and that the TCE area drained down a drain onto
3 the ground outside the plant?

4 A. I seen it going down the drain, yes.

5 Q. Okay. Could you show us where this drain was
6 located.

7 A. It would be east (indicating).

8 Q. Could you write "drain." Could you draw a
9 little circle so we're sure and then write
10 "drain" there.

11 A. (Witness complies.)

12 Q. And I think you mentioned earlier that there was
13 a swampy area behind the plant?

14 A. Yes.

15 Q. Is that visible on here?

16 A. It would be this dark area way back here
17 (indicating).

18 Q. Could you draw a circle around what you consider
19 to be the swampy area and also write the word
20 "swamp."

21 A. (Witness complies.)

22 Q. Is that area below the grade of the plant
23 itself?

24 A. Yes.

25 Q. How far below, would you say?

1 A. Farley Foot.

2 Q. Okay.

3 A. That's just a guess, though. I've never
4 measured it.

5 Q. Sure. To give us an idea of the scale of this,
6 do you know what any of the dimensions of this
7 plant are?

8 A. No, I don't. All you could -- all you could
9 almost do is notice the cars in the parking lot.

10 Q. I see. Okay. Now, we've reached the point
11 where you've stacked these barrels of still
12 bottoms outside the plant.

13 MS. HANEBUTT: Just again, Frank, I
14 can't be said that he didn't stack them. Just
15 if we could keep that straight, I'd appreciate
16 it.

17 MR. BENTKOVER: I'm not --

18 MS. HANEBUTT: I just think you're
19 mischaracterizing his testimony. So let me just
20 get that objection on the record.

21 BY MR. BENTKOVER:

22 Q. Who actually moved the barrels to the outside of
23 the plant?

24 A. I did.

25 Q. Did anyone else besides you move them?



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